

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

SCOTT MALCOLM and TIM
MCGOUGH,

Civil No. 05-2099 (JRT/FLN)

Plaintiffs,

v.

**ORDER ADOPTING
REPORT AND RECOMMENDATION
OF MAGISTRATE JUDGE**

VERTICAL HORIZON, INC.,
VERTICAL HORIZON
CONSTRUCTION LLC and MICHAEL
SHAWN LOWERY,

Defendants.

Pamela Hodges Nissen, **McGRANN, SHEA, ANDERSON,
CARNIVAL, STRAUGHN & LAMB**, 800 Nicollet Mall, Suite 2600,
Minneapolis, Minnesota 55402, for plaintiffs.

Jean B. Roth and Stephen H. Parsons, **MANSFIELD, TANICK &
COHEN**, 220 South 6th Street, Suite 1700, Minneapolis, Minnesota
55402, for defendants

Based upon the Findings of Fact, Conclusions of Law, and Recommendation by
United States Magistrate Judge Franklin L. Noel dated January 18, 2008, all the files and
records, and no objections having been filed to said Report and Recommendation,

IT IS HEREBY ORDERED that:

1. The judgment [Docket No. 45] previously entered in this case on May 24, 2007, is
amended to reflect that the portion of the judgment that consisted of delinquent fringe
benefit contributions and liquidated damages is reduced from \$27,448.06 to \$24,762.97.

2. The Court finds that Plaintiffs have satisfied their obligation to provide an accounting pursuant to the May 24, 2007, Order.

3. Given that the accounting is now complete in this case, defendant Lowery's Motion to Amend [Docket No. 71], Motion to Compel [Docket No.77] and Motion for protective order [Docket No. 90] are **DENIED** as moot.

DATED: February 11, 2008
at Minneapolis, Minnesota.

s/John R. Tunheim
JOHN R. TUNHEIM
United States District Judge